

Counting Methods

FOR SPONSORS OF GROUP HEALTH PLANS

When counting, keep in mind that the term “employee” generally means a common law employee. Partners, shareholders, and sole proprietors are not normally considered employees. Of course there are exceptions, noted below.

TO DETERMINE	WHEN APPLIED	WHAT TO COUNT	HOW TO COUNT FULL-TIME (FT), FULL-TIME EQUALVALENT (FTE) & PART-TIME (PT) EMPLOYEES	GUIDELINES
Whether a health plan is subject to ERISA	Health plans with 1 or more covered employees	Covered employees and former employees	Count FT and PT as 1	<ul style="list-style-type: none"> » ERISA applies to virtually all group health plans sponsored by private sector employers » Certain church and governmental plans are exempt from ERISA
Whether an employer is subject to Title VII of the Civil Rights Act, as amended by the Pregnancy Discrimination Act (PDA)	Employers with at least 15 employees ⁱ	Employees	Count FT and PT as 1	Number of employees working 20 or more calendar weeks in the current or preceding calendar year
Whether an employer is subject to the Americans with Disabilities Act (ADA)	Employers with at least 15 employees ⁱ	Employees	Count FT and PT as 1	Number of employees working 20 or more calendar weeks in the current or preceding calendar year
Whether an employer is subject to the Genetic Information Nondiscrimination Act (GINA)	Employers with at least 20 employees ⁱ	Employees	Count FT and PT as 1	Number of employees working 20 or more calendar weeks in the current or preceding calendar year
Whether a health plan is subject to Age Discrimination in Employment Act (ADEA)	Employers with at least 20 employees ⁱ	Employees	Count FT and PT as 1	Number of employees working 20 or more calendar weeks in the current or preceding calendar year

TO DETERMINE	WHEN APPLIED	WHAT TO COUNT	HOW TO COUNT FULL-TIME (FT), FULL-TIME EQUIVALENT (FTE) & PART-TIME (PT) EMPLOYEES	GUIDELINES
Whether a health plan is subject to COBRA	Employers with at least 20 employees	Employees	<ul style="list-style-type: none"> » Count FT and FTE as 1 » Each PT counts as a fraction, with the numerator equal to the number of hours worked by that employee and the denominator equal to the number of hours that must be worked on a typical business day in order to be considered FTⁱⁱ 	Number of employees (in all commonly-owned businesses) on more than 50 percent of its typical business days in the previous calendar year ⁱⁱⁱ
Whether a health plan is subject to Medicare Secondary Payer Rules Based on Age	Health plans of employers with 20 or more employees	Employees	Count FT and PT as 1	<ul style="list-style-type: none"> » Number of employees in each working day in at least 20 weeks in either the current or the preceding calendar year » The 20-or-more employees requirement must be met at the time the individual receives the services for which Medicare benefits are claimed ^{iv}
Whether an employer is subject to FMLA	<ul style="list-style-type: none"> » All Employers with at least 50 employees ⁱ » Public agencies and public and private schools are covered regardless of the number of employees. 	Employees	Count FT and PT as 1	Number of employees working 20 or more weeks in the current or preceding calendar year within a 75 mile radius of the applicable work location
Whether an employer is an Applicable Large Employer (ALE) under the ACA	Employers with at least 50 employees ^v	Employees	<ul style="list-style-type: none"> » Count FT (30 or more hours per week determined on a monthly basis) and FTE as 1 » Aggregate PT hours (no more than 120 hours per employee) and divide by 120 to determine FTE^{vi} 	<ul style="list-style-type: none"> » Total the number of full-time and full-time equivalent employees in each month of the preceding year and divide by 12 » If the result is 50 or greater, the employer is an ALE for the current year
Whether an employer must file a Form 5500	Welfare plans that cover at least 100 employees	Covered (Employee) Lives	Count FT and PT as 1	<ul style="list-style-type: none"> » Count the number of employees covered under the plan at the beginning of the plan year » Applies to ERISA plans only

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Whether a health plan is subject to the Mental Health Parity and Addiction Equity Act (MHPAEA)	<ul style="list-style-type: none"> » Private sector employers with at least 51 employees^{vii} » Nonfederal governmental employer with at least 101 employees 	Employees	Count FT and PT as 1	<ul style="list-style-type: none"> » Count average number of employees on business days during the preceding calendar year » Note that MHPAEA applies to group health plans providing either mental health or substance use disorder benefits
Whether a health plan is subject to Medicare Secondary Payer Rules Based on Disability	Health plans of employers that employed 100 or more employees	Employees	Count FT and PT as 1	Number of employees on 50 percent or more of business days during the previous calendar year ^{viii}
Whether an employer must list the cost of health benefits on the Form W-2	Employers that file 250 or more W-2s	W-2s filed with the IRS	N/A	Count the number of W-2s filed in the preceding calendar year
Fees due under the Transitional Reinsurance Program	<ul style="list-style-type: none"> » All self-insured medical plans regardless of employee count » Fee based on the number of covered lives 	Covered (Employee + Dependents) Lives	N/A	Fee is calculated based on average number of covered lives ^{ix} , using: <ul style="list-style-type: none"> » Actual Count » Snapshot Count » Snapshot Factor » Form 5500
Fees due under PCORI Fee Program	All self-insured medical plans regardless of employee count Fee based on the number of covered lives.	Covered (Employee + Dependents) Lives	N/A	Fee is calculated based on average number of covered lives ^x , using: <ul style="list-style-type: none"> » Actual Count Method » Snapshot Method » Form 5500 Method

This information is intended only as an overview. Other requirements, exceptions or special rules may apply. It is not legal advice and should not be construed as legal advice. Employers should seek the services of a competent legal or tax professional to determine their obligations under these laws and requirements.

- i** Two or more related employers may be considered a single employer for counting purposes. Courts consider the following factors: (1) interrelation of operations, (2) centralized control of labor or employment decisions, (3) common management, and (4) common ownership or financial control. Shareholders may be considered employees depending on their relationship with the organization.
- ii** Employers that want to apply the fractional rule to salaried, commissioned or other employees not paid by the hour should maintain records to establish actual hours worked.
- iii** Two or more related employers may be considered a single employer for counting purposes if they are part of a controlled group under the Internal Revenue Code. In the case of a multiemployer (collectively-bargained union) plan, a small-employer plan is a group health plan under which each of the employers contributing to the plan for a calendar year normally employed fewer than 20 employees during the preceding calendar year. Employers providing benefits through a MEWA should consult with the MEWA administrator.
- iv** Small employers in a multi-employer group plan (such as a MEWA) that includes more than 20 employees will be subject to the rule, unless an exemption has been claimed. Consult the MEWA administrator for applicability of this rule.
- v** Two or more related employers may be considered a single employer for counting purposes if they are part of a controlled group under the Internal Revenue Code. For employees paid on a non-hourly basis (such as salaried employees), an employer may calculate the actual hours of service using the same method as for hourly employees, or use a days-worked equivalency crediting the employee with eight hours of service for each day for which the employee would be required to be credited with at least one hour of service, or a weeks-worked equivalency whereby an employee would be credited with 40 hours of service for each week for which the employee would be required to be credited with at least one hour of service.
- vi** Special counting rules apply with respect to various situations, including teachers on summer break, adjunct faculty, seasonal workers, on-call employees, employees on paid leave, airline employees, members of religious orders and others. Consult IRS guidance (<https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>) or a legal advisor for more information.
- vii** Two or more related employers may be considered a single employer for counting purposes if they are part of a controlled group under the Internal Revenue Code.
- viii** Small employers in a multi-employer group plan (such as a MEWA) will be subject to the rule if any employer in the group has more than 100 employees.
- ix** **Actual Count:** Add the total number of lives covered for each day of the first nine months of the calendar year and divide that total by the number of days in the first nine months.
Snapshot Count: Add the total number of lives covered on any date during the same corresponding month in each of the first three quarters of the calendar year, and divide that total by the number of dates on which a count was made.
Snapshot Factor: Use the same method as in Snapshot Count, except that the number of lives covered on a given date is calculated by adding the number of participants with self-only coverage to the product of the number of participants with coverage other than self-only coverage and a factor of 2.35. This method can be used to estimate the number of total lives included in coverage that is not self-only coverage.
Form 5500 Method: The number of participants as of the beginning and end of the plan year as reported on Form 5500 for the last applicable time period.
- x** **Actual Count Method:** Add the total lives covered for each day of the plan year and divide that total by the total number of days in the plan year.
Snapshot Method: Add the total number of lives covered on one date during the first, second or third month of each quarter, and divide that total by the number of dates on which a count was made.
Form 5500 Method: The number of participants as of the beginning and end of the plan year as reported on Form 5500 for the last applicable time period.